

Members

Sen. Connie Lawson, Chairperson
Sen. Allen Paul
Sen. Greg Walker
Sen. Timothy Lanane
Sen. Richard Young
Sen. Frank Mrvan
Rep. Jeb Bardon, Vice-Chairperson
Rep. Matt Pierce
Rep. Joseph Micon
Rep. Michael Murphy
Rep. Woody Burton
Rep. Randy Borrer



INTERIM STUDY COMMITTEE ON MORTGAGE LENDING PRACTICES AND HOME LOAN FORECLOSURES

LSA Staff:

Sarah Burkman, Attorney for the Committee
Chris Baker, Fiscal Analyst for the Committee

Authority: P.L. 230-2007 (HEA 1717-2007)

**Legislative Services Agency
200 West Washington Street, Suite 301
Indianapolis, Indiana 46204-2789
Tel: (317) 233-0696 Fax: (317) 232-2554**

MEETING MINUTES¹

Meeting Date: October 30, 2007
Meeting Time: 10:00 A.M.
Meeting Place: State House, 200 W. Washington
St., Senate Chambers
Meeting City: Indianapolis, Indiana
Meeting Number: 4

Members Present: Sen. Connie Lawson, Chairperson; Sen. Greg Walker; Sen. Timothy Lanane; Sen. Frank Mrvan; Rep. Matt Pierce; Rep. Michael Murphy; Rep. Woody Burton; Rep. Randy Borrer.

Members Absent: Sen. Allen Paul; Sen. Richard Young; Rep. Jeb Bardon, Vice-Chairperson; Rep. Joseph Micon.

Senator Connie Lawson, Chair of the Interim Study Committee on Mortgage Lending Practices and Home Loan Foreclosures, called the meeting to order at 10:20 a.m. Senator Lawson announced that the Committee would discuss and vote on recommending two preliminary bill drafts for introduction during the 2008 legislative session. The Committee would also discuss and vote on a draft of a final report, including a list of 27 additional recommendations for legislation to be pursued by members of the 2008 General Assembly.

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.in.gov/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

(1) PD 3402 (Lawson):

Senator Lawson offered PD 3402,² which would make a number of changes to the statute governing the regulation of loan brokers (IC 23-2-5). She explained that the draft was based on recommendations submitted to the Committee by the Securities Division of the Office of the Indiana Secretary of State. She then invited Chris Naylor, Securities Commissioner, to discuss the legislation. Mr. Naylor highlighted several of the bill's provisions, including language specifying that applicants for licensure or certification under the loan broker statute must submit fingerprints for a national criminal history background check by the FBI. He explained that the FBI had refused to conduct background checks under the existing statute, which does not specify that fingerprints must be submitted.

Mr. Naylor also noted that the bill would require loan brokers to safeguard the personal information of borrowers and prospective borrowers. He pointed out that the existing statute does not provide any measure of information privacy, even though brokers regularly hold and control borrowers' personal and financial information.

Finally, he discussed a number of actions that would be prohibited under the legislation. In particular, he noted that a broker would be prohibited from recommending a loan to, or obtaining a loan for, a prospective borrower without first determining the suitability of the loan for the borrower, based on certain financial criteria.

Following discussion by the Committee, Senator Lawson conducted a roll call vote on recommending PD 3402 for introduction during the 2008 legislative session. The Committee voted 7-0 to recommend the legislation.

(2) Final Report:

Following the vote on PD 3402, Senator Lawson asked Committee members to review a draft of the Committee's final report. She directed the discussion to consideration of the report's 27 listed recommendations for legislation during the 2008 session.³ The Committee then discussed each proposal in turn and voted by consent whether to include the particular proposal in the final report.

After all proposals had been considered and voted upon, Senator Lawson conducted a vote on accepting the report, as amended by the Committee,⁴ and forwarding it to the Legislative Council. The Committee voted 7-0 to approve the report, as amended, and to forward it to the Legislative Council.

(3) PD 3417 (Murphy):

Senator Lawson then invited Representative Mike Murphy to present PD 3417⁵ for the Committee's consideration. Representative Murphy announced that his bill was intended to prevent additional foreclosures in Indiana by ensuring that consumers are well informed

²See Exhibit 1.

³See Exhibit 2 for a complete list of the proposals considered by the Committee.

⁴The final report, as amended and adopted by the Committee, is available on the Internet at the General Assembly homepage: <http://www.in.gov/legislative/>.

⁵See Exhibit 3.

about the costs of homeownership and particular loan products before closing on a mortgage. He then outlined the bill's main provisions.

First, the legislation would require closing agents to make closing documents available to borrowers at least 48 hours before the closing. Representative Murphy suggested that many borrowers do not know of their right under federal law to obtain closing documents 24 hours before the closing. In any case, he argued that the onus should not be on the borrower to request these papers; rather, they should be provided to the borrower as a matter of course. He further maintained that 24 hours is not enough time for borrowers to review such complex and voluminous documents.

Representative Burton stated that he agreed in concept with this proposal, but he suggested that as a practical matter, closing agents would not be able to obtain all of the required documents 48 hours in advance of the closing. Representative Murphy responded that in situations in which that is the case, the closing would simply have to be rescheduled to allow the borrower the specified amount of time to review the documents.

In addition, Representative Murphy indicated that bill as drafted would require closing agents to provide application forms for the homestead credit and the mortgage property tax exemption to a borrower at least 48 hours before the closing. The closing agent would also have to offer to file the forms, on behalf of the borrower, with the appropriate county auditor. However, Representative Murphy proposed strengthening this provision to require closing agents to actually file (and not just offer to file) the applications in every transaction in which the borrower qualifies for the credit or the exemption.

Representative Murphy also noted that the bill would prohibit brokers and lenders from recommending or issuing stated-income or "no documentation" loans to borrowers. It would further prohibit them from recommending or issuing a loan unless they first determine that the loan is suitable for the borrower based on a reasonable inquiry into the borrower's creditworthiness. In explaining this provision, Representative Murphy noted that several of his constituents had qualified for loans that they were ultimately unable to pay, because their income from overtime or other unstable sources had been considered in the underwriting decision. Representative Murphy pointed out that the bill would preclude the broker or lender from considering overtime or seasonal compensation in making an underwriting decision.

In cases in which a loan has already been issued, the bill would require lenders to offer a temporary forbearance or some other workout option to a borrower whenever a home loan becomes 90 days past due. Representative Murphy explained that lenders would be prohibited from initiating a foreclosure proceeding unless they could first prove that such an offer was made to the borrower.

To further promote homeownership education efforts, the bill would provide a state tax liability credit for lenders that incur costs in providing educational materials or homeownership counseling to prospective borrowers. As drafted, the bill would provide a credit equal to 5% of the lender's qualified costs for providing such materials or counseling.

Finally, the bill would require the state agencies that currently regulate the various professionals involved in home loan transactions to form the Mortgage Lending and Fraud Prevention Task Force to coordinate the state's efforts to enforce state laws and regulations concerning mortgage lending practices and mortgage fraud.

After discussion by the Committee on the bill's various provisions, Representative Murphy

decided to withdraw PD 3417 from further consideration by the Committee in order to further refine the bill's concepts before introduction during the 2008 session.

There being no further business, Senator Lawson adjourned the meeting at 1:40 p.m.